

# SENATE NO. 2152

## **AN ACT** TO ADOPT PROTECTIONS FOR SALEM'S GOVERNMENTALLY INVOLVED HOUSING STOCK IN THE CITY OF SALEM

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1   SECTION 1.   Whereas, a serious public emergency exists with respect to the housing of citizens in  
2   the Salem residing in governmentally involved housing, inasmuch as there is a threat that many low-  
3   income individuals and families residing in such housing, particularly those elderly and disabled  
4   persons, may be threatened with displacement as a result of prepayment of mortgage financing, loss of  
5   use restrictions, expiring subsidy contracts, and expected increases in rent, and there is a threat that  
6   affordable housing stock will be lost due to the expiration of use restrictions and subsidy contracts and  
7   such pre-payment, further exacerbating an extreme housing shortage within the City for low-income  
8   families and voters, and   whereas, in approving Chapter 40P of the General Laws, the voters did not  
9   exempt such housing from protection or regulation and, whereas it is the city's policy to encourage  
10   owners of this governmentally involved housing to accept incentives to keep such housing affordable  
11   and avert displacement; that such emergency should be met by the City of Salem immediately;  
12   therefore, therefore, this act is declared to be in the public interest.

13 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the contrary,  
14 including, without limitation, the provisions of chapter forty P of the General Laws and chapter 282 of  
15 the Acts of nineteen hundred and ninety-four, for so long as the City Council of Salem shall determine  
16 that the circumstances described in section one hereof continue to exist, the City of Salem shall by  
17 ordinance regulate the rent for use or occupancy of governmentally involved or formerly  
18 governmentally involved housing to the extent such regulation is not preempted by federal law or by  
19 section six of chapter 708 of the Acts of nineteen hundred and sixty-six as amended, once the basis for  
20 federal or state rent regulation or preemption no longer exists. For purposes of this act,  
21 “governmentally involved housing” is defined as housing units which the United States, the  
22 Commonwealth or any authority created under the laws thereof (i) insures the mortgage thereon, or  
23 owns, operates, finances, or subsidizes such housing units,  
24 and (ii) regulates the individual rents thereof, including without limitation housing units constructed or  
25 rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. §1701q),  
26 Section 221(d) and Section 236 of the National Housing Act, as amended (12 U.S.C. §§1715l(d) or  
27 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended (42  
28 U.S.C. §8013) or Section 13A of chapter 708 of the Acts of nineteen hundred and sixty-six, added by  
29 Section 10 of chapter 855 of the Acts of nineteen hundred and seventy, as amended (M.G.L. c. 23A  
30 App. §1-13A), or housing units financed or subsidized pursuant to project-based programs for low-  
31 income persons under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. §  
32 1437f) or the project-based Massachusetts Rental Voucher Program, so-called (see line Item 7004-  
33 9004 of Section 2 of chapter 159 of the Acts of two thousand, as well as 760 C.M.R, Part 49.00), but  
34 not including the following;

35 (1) housing units owned or acquired by the City of Salem through tax foreclosure;

36 (2) housing units in a building or structure of fewer than one hundred units which are not part of a  
37 larger housing development, whether on one or more sites:

38 (3) structures containing housing units subsidized with mobile tenant-based rental assistance that  
39 would not otherwise come within the definition of governmentally involved housing;

40 (4) public housing owned or operated by the Salem Housing Authority under chapter 121Bf of the  
41 General Laws, the United States Housing Act of 1937 (42 U.S.C. §§ 1437a *et seq.*), or any successor  
42 act or public housing programs formerly assisted under the United States Housing Act of 1937;

43 (5) housing units where the sole government involvement is the owners participation in federal, state,  
44 or municipal funded programs for home repairs, energy conservation, or lead paint abatement.

45 (6) housing units which become governmentally involved after January 1, 2002

46 For the purpose of this act, "formerly governmentally involved housing" is defined as housing which  
47 was governmentally involved housing as of July 1, 1996, or which becomes governmentally involved  
48 housing after July 1, 1996, but which then no longer is owned, operated, financed, subsidized,  
49 mortgage-insured, or rent-regulated by the United States, the Commonwealth, or any authority created  
50 under the laws thereof, provided that "formerly governmentally involved housing" shall include any  
51 housing receiving subsidy under Section 8(t) of the United States Housing Act of 1937 (42 U.S.C.  
52 §1437f(t)).

53 For, the purpose of this act, "low-income" is defined as annual household income which is eighty per  
54 cent or less of the median income for the area as determined by the United States Department of  
55 Housing and Urban Development, with adjustments for smaller and larger families.

56 The City of Salem shall by ordinance create an official body to establish as the maximum rent for the  
57 governmentally involved and formally governmentally involved housing units the rent in effect

58 therefore on July 1, 1996, or six months before the basis for federal or state rent regulation or  
59 preemption lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income  
60 as of the date of the official body's decision, provided, however, said ordinance shall authorize the  
61 official body to make individual adjustments in such maximum rents as may be necessary to remove  
62 hardships or to correct other inequities. In making individual adjustments to remove hardships or to  
63 correct other inequities, the official body shall observe the principle of maintaining maximum rents for  
64 such housing units at levels that will yield to owners a fair net operating income from such housing  
65 units. In determining whether the maximum rent for such housing units yields a fair net operating  
66 income, due consideration shall be given to, among other relevant factors: (1) increases in property  
67 taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major capital  
68 improvement of the housing units, distinguished from ordinary repair, replacement, and maintenance,  
69 (4) increases or decreases in living space, services, furniture, furnishings or equipment; and (5)  
70 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to perform  
71 ordinary repair, replacement, or maintenance.

72 (B) Such ordinance shall provide that no person shall bring an action to recover possession of a  
73 governmentally involved housing unit, or of a formerly governmentally involved housing unit, to the  
74 extent that such regulation is not otherwise preempted by federal law or section six of chapter 708 of  
75 the acts of nineteen hundred and sixty-six as amended, unless:

76 (1) the tenant has failed to pay the rent to which the owner is entitled;

77 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with chapter 93A of  
78 the General Laws or this act other than the obligation to surrender possession upon proper notice, and  
79 has failed to cure the violation after having received written notice thereof;

80 (3) the tenant is causing, committing, or permitting a nuisance in, or substantial damage to, the  
81 housing unit, or is creating substantial interference with the comfort, safety, or enjoyment of the owner  
82 or other occupants of the same or any adjacent unit;

83 (4) the tenant has used or permitted use of a housing unit for illegal purposes;

84 (5) the tenant, who had a written lease or rental agreement which has terminated, has refused, after  
85 written requests or demand by the owner, to execute a written extension or renewal thereof for a  
86 further term of like duration on terms not inconsistent with or violative of any provision of this act;

87 (6) the tenant has refused the owner reasonable access to the housing unit for the purpose of making  
88 necessary repairs or improvements required by law, or for the purpose of inspection as permitted or  
89 required by the lease or law, or for the purpose of showing the housing unit to any prospective  
90 purchaser or mortgagee;

91 (7) the tenant holding at the end of a lease term is a subtenant not approved by the owner; or,

92 (8) the owner seeks to recover possession for any other just cause not in conflict with the provisions  
93 and purposes of this act or chapter 93A of the General laws.

94 The provisions of this section shall be construed as additional restrictions on the right to recover  
95 possession of such housing units.

96 (C) Such ordinance shall also provide that no person shall remove any governmentally- involved or  
97 formerly governmentally involved housing accommodation from low income rental housing use  
98 (including but not limited to sale, lease, or other disposition of the property which may have such an  
99 effect), or convert such property to a condominium or cooperative, without first obtaining a permit for

100 that purpose from the official body, to the extent that such provision is not preempted by federal law or  
101 section six of chapter 708 of the acts of nineteen hundred and sixty-six as amended. Such permit may  
102 be subject to terms and conditions not inconsistent with the purposes and provisions of this act,  
103 including, without limitation, (a) incentives to continue in effect the low income restrictions previously  
104 in place for the property and (b) where sale, lease, or disposition of the property may result in the loss  
105 of all or a portion of the property for low income rental housing use, the right of an incorporated  
106 tenants association in such housing, the city of Salem, the Salem Housing Authority or non-profit  
107 community development corporations, to negotiate for, acquire and operate such property on  
108 substantially equivalent terms and conditions as offered or available to a bona fide third-party  
109 purchaser.

110 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts of nineteen  
111 hundred and sixty-six as amended, such ordinance shall require that owners of governmentally  
112 involved housing, or formerly governmentally involved housing, affirmatively seek out and accept any  
113 prospective governmental housing resources, whether tenant-based or project-based, which maximize  
114 affordability of the housing units consistent with the income character of the property and the owner's  
115 right to obtain a fair net operating income for the housing units., provided that the city shall assist  
116 owners by identifying such governmental housing resources.

117 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts of nineteen  
118 hundred and sixty-six as amended, and so long as such regulation is consistent with the owners right to  
119 obtain a fair net operating income, such ordinance shall also provide that the city may establish local  
120 preferences, priorities, and income limits for admission to governmentally involved housing or  
121 formally governmentally involved housing upon unit turnover, consistent, to the extent practicable,  
122 with the income profile of the property twelve months prior to the date of the loss of rent preemption

123 or the decision to not renew an expiring subsidy contract. The official body may approve an alternate  
124 plan requested by the owner, consistent with the provision of this Act. No ordinance or regulation shall  
125 require an owner to create a tenancy involving any person with a history of conduct which would, if  
126 repeated, be grounds for eviction from such housing.

127 (F) Such ordinance shall also provide that the official body may grant exemptions and exceptions to  
128 the general provisions of this act when such action would tend to maintain or increase the supply of  
129 affordable housing in Salem, including, without limitation, promoting the sale of properties to bone  
130 fide tenant organizations or non-profit community development corporations under terms and  
131 conditions which would tend to maintain the income character of the property.

132 (G) Such ordinance shall provide that the official body may promulgate such rules, regulations and  
133 orders as it may deem necessary to effectuate the purposes of this act and the ordinance. The board  
134 may hold hearings on any matters within its authority under this act and ordinance. Any hearings  
135 regarding matters related to regulation of rents or removal permits for governmentally involved or  
136 formerly governmentally involved housing or regarding compliance with other provisions of this act,  
137 or the ordinance, orders, rules, or regulations adopted or promulgated hereunder, shall be conducted by  
138 the official body in accordance with the provisions of section eleven of chapter thirty A of the  
139 General Laws except that requirements (7) and (8) of such section eleven shall not apply to such  
140 hearings.

141 (H) All decisions of the official body may be appealed to the housing court department of the trial  
142 court, Northeast Division, by any person aggrieved thereby, whether or not previously a party in the  
143 matter, within thirty calendar days after notice of such decision. Judicial review of adjudicatory  
144 decisions shall be conducted in accordance with section fourteen of chapter thirty A of the General

145 Laws. Judicial review of regulations shall be conducted in accordance with section seven of chapter  
146 thirty A of the General Laws. The housing court department of the trial court, Northeast Division shall  
147 have jurisdiction to enforce the provision hereof and any ordinance, rule or regulation adopted  
148 hereunder, and on application of the board or any aggrieved person may restrain or enjoin violations of  
149 any such ordinance, rule, or regulation. In the interests of justice, the court may allow any necessary  
150 parties to be joined in or to intervene in any action brought hereunder and may in its discretion allow  
151 or require an action to proceed as a class action.

152 SECTION 3. It shall be unlawful for any person to do or omit to do any action in violation of this act,  
153 or any order, ordinance, rule or regulation adopted or promulgated hereunder. Whoever willfully  
154 violates any provision of this act or any order, ordinance, rule or regulation adopted or promulgated  
155 hereunder or whoever makes a false statement in any testimony before the board or its agents, or  
156 whoever knowingly supplies the official body with false information shall be punished by a fine of not  
157 more than four hundred dollars or by imprisonment for not more than ninety days or both; provided  
158 however, that in the case of a second or subsequent offense, or where the violation continues after  
159 notice thereof, such person shall be punished by a fine of not more than two thousand dollars, or by  
160 imprisonment for not more than one year, or both.

161 SECTION 4. The provisions of this act are severable, and if any of its provisions shall be held  
162 unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court  
163 shall not affect or impair any of the remaining provisions.

164 SECTION 5. involved The provisions of M.G.L. c. 40P shall not apply to any ordinance adopted  
165 under this enabling authority.

166     SECTION 6. This act shall take effect upon its passage.